



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Joseph Bencivenne,
et al., Department of Labor and
Workforce Development

CSC Docket No. 2019-2905 *et al.*

Classification and Salary
Re-evaluation Appeals

ISSUED: June 13, 2019 (RE)

Joseph Bencivenne, Amy Brams, Melanie Callender, Robert Eckert Jr., Fred Eisner, Angela Fairweather, Helen Feldman, Joycelyn Fierstien, Turhan Floyd, Pamela Foley, Howard Mangel, Teissy Meza, Thomas Plattovinsak, Annamaria Pruscino, Steven Reed, Jane Shapiro, Wayne Tillman, Leslie Williams and Joseph Wieliczko appeal the determination from Division of Agency Services (Agency Services) that the Medical Consultant, Psychologist title is not entitled to a salary reevaluation. The appellants also appeal the decisions of Agency Services which found that their positions with the Department of Labor and Workforce Development (DLWD) are properly classified as an Medical Consultant, Psychologist. They seek a Medical Consultant job classification in this proceeding.

Each of the appellants serve in the unclassified title Medical Consultant, Psychologist. This title is a variant of the requested title, which is the base title, and the variant title was created in June 2007. These positions are located in the Division of Disability Determinations Services in the Department of Labor and Workforce Development, report to Chief Disability Claims Service, and have no supervisory responsibility. The appellants submitted Position Classification Questionnaires (PCQ) in support of their requests to have their “title and pay rate be the same as other [M]edical [C]onsultants.” In this regard, the appellants claimed that the duties they listed on their PCQs would be properly classified by the Medical Consultant, rather than the Medical Consultant, Psychologist title. The DLWD have submitted the appellants’ request to Agency Services indicating that it did not support the appellants’ request for a salary increase. Specifically, DLWD stated that incumbents in the Medical Consultant title are required to be physicians

(licensed medical doctors) and review claims involving physical/functioning impairments. Conversely, incumbents in the Medical Consultant, Psychologist title are required to possess a valid license to practice Psychology and review claims involving mental impairments. DLWD also noted that Agency Services reviewed the matter of compensation levels for Medical Consultant, Psychologist in August 2014, and determined that there should be no change in the compensation level for the title. Agency services reviewed the PCQs, along with related documentation. As detailed in Agency Services' decisions, the classification reviews found that the appellants' assigned duties and responsibilities were commensurate with the title of Medical Consultant, Psychologist. Additionally, Agency Services determined that since their pay rates are based on the salary applicable to the salary rate applicable to the title Medical Consultant, Psychology, their current salary rates were appropriate.

On appeal, the appellants argue that the decision failed to take into consideration the actual duties of Medical Consultant, Psychologists (defined as psychologists and psychiatrists) compared to those of Medical Consultants. Further, they state that the job specifications are virtually identical, except that the Medical Consultant, Psychologist review the medical information to assess psychological and mental impairments, whereas Medical Consultants consider physical impairments. The appellants argue that Medical Consultants do not review or rate mental disability cases. Although Medical Consultant, Psychologists do not fill out the same forms used for physical disability claims, incumbents complete in-depth case reviews requiring completion of detailed forms, including the Psychiatric Review Technique form, the Mental Residual Functioning Capacity form, and the 538 form for children. Conversely, Medical Consultants fill out only the Residual Functioning Capacity form as needed. They argue that psychological claims can be particularly challenging to evaluate due to lack of objective testing. Medical Consultant, Psychologists review both child and adult claims, while Medical Consultants generally review either adult or child claims exclusively depending on whether the consultant is a pediatrician or an internist.

The appellants maintain that the titles review the same type of medical information, have equal levels of education, training and experience, and determinations lead to the same level of benefits for applicants. However, Medical Consultant, Psychologists are paid approximately 20% less than what Medical Consultants are paid. In this regard, they argue that psychological determinations are not of less value or less complexity than medical rulings. The appellants rely on CFR 404.1616(c) which states, "The psychological consultant completes the medical portion of the case review and any applicable residual functional capacity assessment about all mental impairment(s) in a claim." They note that the regulation indicates that a Medical Consultant will review the psychological claim "when we are unable to obtain the services of a qualified psychiatrist or psychologist despite making every reasonable effort." However, this regulation references

another regulation, CFR 404.1617, which states that efforts to address any shortage of Psychological Consultants to complete mental disability claims should include increases in compensation to attract more qualified applicants. The appellants state that the Division only has “Psychologist Consultants” rating mental claims, however, psychiatrists who perform the identical duties as psychologists and do not review physical disability cases are classified as Medical Consultants. Therefore, the appellants assert that the Medical Consultant, Psychologist title should be compensated at the same level as the Medical Consultant title.

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which if portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

The definition section of the job specification for Medical Consultant, Psychologist states:

Under the direction of an administrator in the Department of Labor and Workforce Development, Division of Disability Determination Services, reviews, evaluates and interprets, medical information regarding psychological and mental impairments provided in Social Security Disability and SSI Disability claims; does other related duties as required.

The definition section of the job specification for Medical Consultant states:

Under the direction of an administrator in the Department of Labor and Workforce Development, Division of Disability Determination Services, reviews, evaluates and interprets medical information regarding physical impairments provided in Social Security Disability and SSI Disability claims; does other related duties as required.

In this case, the appellants contend that the work of a Medical Consultant, Psychologist is equivalent to the work of a Medical Consultant, and that this warrants the two titles to be paid at the same level. The appellants note that distinction between the two titles is that one assesses psychological and mental impairments while the other considers physical impairments, but maintain that each title requires equal levels of education, training and experience; review, evaluate and interpret medical evidence, and whose determinations lead to the same level of benefits. However, a review of the job specifications for the titles

indicate that they are not identical. In these cases, each appellant reviews and assesses medical evidence in disability cases to determine the existence and severity of claimants' psychological impairment. They do not make determinations based on physical impairments. On this basis alone, these positions are properly classified. However, it appears that the basis for the appellants' appeal to Agency Services was too increase the level of compensation paid to incumbents in the Medical Consultant, Psychologist title, not to have their positions reclassified as Medical Consultants.

In State service, levels of compensation are generally set based on a job evaluation that establishes a class code level for each title. However, some job levels are designated as "no-range," meaning that no class code is designated. In this case, the Medical Consultant title and its variants are "no-range" titles. Salaries for "no-range" titles are established, or in some cases are reassessed, through the market pricing process. This methodology involves extracting external pay data from published compensation surveys for the purpose of determining competitive pay rates and trends. This process ensures State employees are compensated at pay rates comparable to those earned by employees in similar positions outside of State government. The last market survey was conducted in 2014 and found that the median salary for psychologists in New Jersey was \$102,214.33. Thus, since incumbent Medical Consultant, Psychologists earned \$104,982.50 in 2014, and the differing licensure and education levels required for each title, no change in compensation was recommended in 2014.

In this case, the appellants' have not provided any evidence that a new market survey should be completed to reassess the compensation levels on the Medical Consultant Psychologist title. In their appeals to both Agency Services and the Civil Service Commission (Commission), the appellants essentially claim that the work, level of required education, and ultimate benefit determination are sufficiently similar to warrant compensation equal to those of incumbents in the Medical Consultant title. The Commission disagrees.

The Medical Consultant requirements are as follows:

A valid license to practice medicine in the State of New Jersey and as established in CFR 404.1616(b) which states;

A medical consultant must be an acceptable medical source, that is;

- (1) Licensed physicians (medical or osteopathic doctors) or;
- (2) License optometrists, for purposes of establishing visual disorders only (except, in the U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and visual fields only) or;

(3) Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle, or;

(4) Qualified speech-language pathologists, for purposes of establishing speech and language impairments only. For this source, “qualified” means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

Medical consultants who are not physicians are limited to evaluating the impairments for which they are qualified.

The Medical Consultant, Psychologist and requirements are as follows:

A valid license to practice psychology in the State of New Jersey and as established in CFR 404.1616(e) which states;

A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she;

- (1) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and
- (2)(i) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or
- (2)(ii) is listed in a national register of health service providers in psychology which the Commissioner of Social Security deems appropriate; and
- (3) possesses two years of supervised clinical experience as a psychologist in health service, at least one year of which is post master’s degree.

Accordingly, the requirements for the two titles are very different, and the Medical Consultant, Psychologist incumbent is not required to be a licensed physician. Thus, the titles do not have the same requirements, as argued by the appellants. Further, the appellants argue that the Medical Consultant,

Psychologist title is defined as psychologists and psychiatrists. As noted above, this is not the case.

In the matter at hand, Agency Services reviewed a request in 2014 and determined that the salary was appropriately established through the market pricing process, and was more than the pay rate given to individuals doing similar work in New York State. The appellants have not provided any evidence of a change in the compensational factors since the title was last reviewed, such as new statutory or regulatory requirements mandating more education or experience than presently needed, a significant change in job duties and responsibilities, and that an increase in the market rate significant to warrant a change. Moreover, since the levels of education and focus of the duties differ between the two titles, the appellants have not established the base and variant title should receive the same compensation.

Although a classification appeal is not the forum for a salary re-evaluation request, the appellants have not established an entitlement to any additional pay. The differing duties and higher requirements of the base title warrant the salary differential.

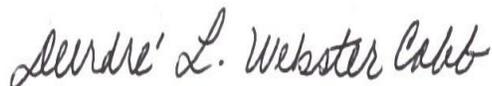
Accordingly, a thorough review of the entire record fails to establish that the appellants have presented a sufficient basis to warrant a Medical Consultant classification of their positions or that the Medical Consultant, Psychologist title should be compensated at a higher rate.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF JUNE, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

c:	Joseph Bencivenne	(CSC Docket Number 2019-2905)
	Amy Brams	(CSC Docket Number 2019-2885)
	Melanie Callender	(CSC Docket Number 2019-2911)
	Robert Eckert Jr.	(CSC Docket Number 2019-2915)
	Fred Eisner	(CSC Docket Number 2019-2883)
	Angela Fairweather	(CSC Docket Number 2019-2909)
	Helen Feldman	(CSC Docket Number 2019-2912)
	Joycelyn Fierstien	(CSC Docket Number 2019-2914)
	Turhan Floyd	(CSC Docket Number 2019-2902)
	Pamela Foley	(CSC Docket Number 2019-2891)
	Howard Mangel	(CSC Docket Number 2019-2913)
	Teissy Meza	(CSC Docket Number 2019-2890)
	Thomas Plattovinsak	(CSC Docket Number 2019-2894)
	Annamaria Pruscino	(CSC Docket Number 2019-2910)
	Steven Reed	(CSC Docket Number 2019-2896)
	Jane Shapiro	(CSC Docket Number 2019-2916)
	Wayne Tillman	(CSC Docket Number 2019-2892)
	Leslie Williams	(CSC Docket Number 2019-2893)
	Joseph Wieliczko	(CSC Docket Number 2019-2908)
	Mary Fitzgerald	
	Kelly Glenn	
	Records Center	